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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 500

HENRY BAKER,

Petitioner.

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

DAVID GETZ,
HERBERT SPENCER LEMAN,
HERMAN H. KREKSTEIN,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 500

IN THE MATTER OF JAMES K. BOWEN,
BANKRUPT.

HENRY BAKER,

vs. *Petitioner,*

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decree of the Circuit Court of Appeals for the Third Circuit, entered on September 2, 1943 (R. 138), reversing with directions, the decree of the District Court of the United States for the Eastern District of Pennsylvania, entered November 30, 1942 (R. 129a) 48 Fed. Supp. 67.

Opinions Below.

One opinion was delivered by the District Court. It was written by District Judge Harry E. Kalodner and filed November 30, 1942. It appears on page 115a of the Record and is reported in 48 F. Supp. 67. The opinion of the Circuit Court of Appeals (Circuit Judges Biggs, Goodrich and Woodbury, Judge Woodbury writing) was filed September 2, 1943, and appears at page 133 of the Record. (Case not yet officially reported.)

Jurisdiction.

Jurisdiction is invoked under Sec. 240(a) of the Judicial Code as amended by the Act of February 13, 1925, C. 229 (43 Stat. 938, 28 U. S. C. A. Sec. 347) and Sec. 24(c) of the Bankruptcy Act, as amended, 11 U. S. C. Ch. 4 Sec. 47. The judgment of the Circuit Court of Appeals was entered September 2, 1943.

This was an appeal from an order of the United States District Court for the Eastern District of Pennsylvania entered in a bankruptcy proceeding on November 30, 1942 (R. 129a) The order reversed two orders of the Referee in bankruptcy, striking off and vacating a discharge of real estate of the bankrupt from federal tax liens. The Circuit Court of Appeals for the Third Circuit reversed the District Court and remanded the case for further proceedings not inconsistent with its opinion (R. 138).

Question Presented.

Has a bankruptcy court the power to set aside or reverse a determination involving the valuation of property made by the Commissioner of Internal Revenue pursuant to the provisions of Sec. 3674(b) of the Internal Revenue Code upon an allegation that the determination was induced by constructive fraud?

Statutes Involved.

Bankruptcy Act (52 Stat. 843) 11 U. S. C. A. Sec. 11 (a) (7).

Internal Revenue Code Sections 3674(b), 3675; 53 Stat. 449, 450; Title 26 U. S. C. A. Sections 3674(b), 3675.

Judicial Code, Sec. 240(a) as amended, 43 Stat. 938, 28 U. S. C. A. Sec. 347.

Summary Statement.

The essential facts may be summarized as follows:

On August 12, 1933, federal income taxes in the amount of $15,297.68, plus accrued interest of $5,883.53 (a total of $21,181.21), were assessed against the bankrupt, James K. Bowen. In May, 1935, an assessment of $13,108.92 was made for distilled spirits taxes. Notices of the tax liens were duly filed pursuant to Sec. 3186 of the Revised Statutes, as amended by the Revenue Act of 1928, Sec. 613(a) (now Internal Revenue Code Sec. 3672).

Subsequently in September, 1935, Henry Baker, the petitioner herein, obtained a state court judgment against Bowen for $79,240.42. Since the notices of the tax liens were filed prior to Baker's judgment, the latter was inferior to them.

Bowen's principal assets consisted of certain ground and buildings at 809-811-813 Hamilton Street, Allentown, Pennsylvania. In December, 1938, Baker filed with the Commissioner of Internal Revenue an application for a certificate of discharge of the tax liens on this property, pursuant to the provisions of Sec. 3674(b) of the Internal Revenue Code (Appendix to brief filed with this petition.) On March 10, 1939, following an investigation, the Commissioner determined that the value of the interest of the United States in the real estate was less than $150.00 and authorized the Collector to issue the certificates of discharge upon payment

of $150.00. The said sum was paid and the discharges were issued and filed of record on April 14, 1939 (R. 40a).

Bowen filed a voluntary petition in bankruptcy seven months later on November 8, 1939. In August, 1940, the Hamilton Street property was sold at public sale by the trustee in bankruptcy for $457,500.00, less broker's commissions.

Thereafter, on the 27th day of January, 1941, the United States filed a petition with the Referee, alleging, *inter alia,* that the Commissioner in authorizing the discharge had been misled by Baker as to the value of the property and the amount of the indebtedness on various prior judgment liens. The petition requested the reinstatement of the liens theretofore discharged, as proper charges against the fund realized from the sale of the real estate.

An answer was filed by Baker after which, on hearing before the Referee over the objections of Baker, orders were entered allowing the Government's claims, striking off the discharges of the liens, reinstating the liens, and providing for payment of the Government's claims from the funds to be distributed in accordance with the priority created by the liens.

The District Court, on Baker's petition for review, reversed the orders of the Referee and ordered a distribution without regard to the tax liens. The decision of the District Court was based upon the ground that the Bankruptcy Court did not have jurisdiction to set aside the Commissioner's discharge of the liens and that the Referee erred in vacating or setting aside the discharge of the federal tax liens.

Thereupon the Government appealed to the Circuit Court of Appeals for the Third Circuit which reversed the lower court.

Specification of Errors to Be Urged.

The Circuit Court of Appeals erred:

1. In holding that the Bankruptcy Court has jurisdiction and power to set aside a certificate of discharge of real estate from federal tax liens, issued and recorded under express authorization of the Commissioner of Internal Revenue pursuant to the provisions of Sec. 3674(b) of the Internal Revenue Code.

2. In holding that Sec. 3675 of the Internal Revenue Code does not preclude the court from setting aside for "constructive fraud" a discharge of lien entered pursuant to Sec. 3674(b) of the Internal Revenue Code.

3. In reversing the order of the United States District Court.

Rulings of the Court Below.

The District Court held that the Bankruptcy Court is without jurisdiction in the matter, and that the Referee erred in vacating or setting aside the discharge of the federal tax liens.

A decree in conformity with the opinion of the District Court was thereupon entered.

The Circuit Court ruled that the decree of the District Court be reversed and the case be remanded for further proceedings not inconsistent with its opinion.

Reasons for Granting.

I. *The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court.*

The District Court stated in its opinion, that despite an exhaustive investigation, it failed to find a single case

wherein was involved the vacation of a discharge of a lien, whether in bankruptcy or otherwise.

A conclusive decision on the jurisdiction of a Bankruptcy Court to set aside or reverse a determination involving the valuation of property made by the Commissioner of Internal Revenue, pursuant to Sec. 3674(b) of the Internal Revenue Code, would be of such importance as to warrant the granting of this petition, in view of the fact that it presents a novel question not heretofore settled by this court.

The Circuit Court of Appeals construed the provisions of the Bankruptcy Act (52 Stat. 843, 11 U. S. C. Sec. 11(a)(7)) which confer on the Courts of Bankruptcy the power to "Cause the estates of bankrupts to be collected, reduced to money and distributed and determine controversies in relation thereto," as conferring jurisdiction upon the court to hear and determine the question presented. Neither this court, nor any court of inferior jurisdiction, has heretofore had occasion to pass upon this moot question which is an important one of federal law.

II. *The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this court.*

In *Arkansas Corporation Commission, et al.* v. *Thompson, Trustee,* 313 U. S. 132, this court ruled substantially that there is nothing in the history of bankruptcy legislation to support the theory that Congress intended to set the federal courts up as super-assessment tribunals over state taxing agencies. Logically it should follow that the same lack of jurisdiction exists to review assessments or other phases of the assertion or discharge of liens for taxes by the Commissioner of Internal Revenue, especially in view

of the plain and unambiguous language of Sec. 3675 of the Internal Revenue Code which is as follows:

> "A certificate of release or of partial discharge issued under this subchapter shall be *conclusive* that the lien upon the property covered by the certificate is extinguished." (Emphasis supplied.)

For these reasons it is respectfully submitted that this petition should be granted.

DAVID GETZ,
HERBERT SPENCER LEMAN,
HERMAN H. KREKSTEIN,
Attorneys for Petitioner.